

**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF TENNESSEE,**  
**AT KNOXVILLE**

PAMELA COLLINS,	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	No. 3:10-cv-451
	)	Phillips/Shirley
PROGRESSIVE DIRECT INSURANCE	)	
COMPANY, a/k/a MOUNTAIN	)	
LAUREL ASSURANCE COMPANY,	)	
Defendant/Counter-Plaintiff.	)	

**MOTION TO DISMISS**

Comes Counter-Defendant, by and through counsel, pursuant to F.R.C.P. 12 and moves that the Counter-Complaint as filed be dismissed, and in support thereof would show:

1. The Plaintiff filed the original action in the Union County Circuit Court on September 13, 2010.
2. The Defendant removed the case to this Honorable Court, and filed an Answer to the Complaint on October 28, 2010 as appears of record as Document 3.
3. The Defendant then filed a Counter-Complaint on November 25, 2010 as appears of record as Document 5.
4. The allegations and statements contained in the Counter-Claim is the subject matter of the Plaintiff's/Counter-Defendant's original claim, and arises out of the same occurrence that the original claim is brought.
5. The Counter-Claim was not filed in the initial pleading filed by the Defendant in its Answer, and is a Compulsory Counter-Claim under Rule 13(a) of the Federal Rules of Civil Procedure which requires such claims to be made in the initial pleading.
6. The Counter-Claim was not made with leave of the Court, and should be deemed waived if not filed in the initial pleading.

7. The Counter-Complaint was not timely filed, and should not be allowed.

Wherefore, the Counter-Defendant respectfully moves that the Counter-Complaint be dismissed. In the alternative, the Counter-Defendant prays for additional time in which to file an Answer to the Counter-Complaint.

Respectfully Submitted,

/s/ Dirk A. Daniel  
Dirk A. Daniel BPR# 20710  
Attorney for Plaintiff/Counter-Defendant  
P.O. Box 6  
Rutledge, Tennessee 37861

**CERTIFICATE OF SERVICE**

I hereby certify that on December 28, 2010, a copy of the foregoing Motion to Dismiss was filed electronically. Notice of this filing will be sent to all parties indicated by operation of the Court's electronic filing system which may be accessed electronically.

/s/ Dirk A. Daniel  
Dirk A. Daniel  
Attorney for Plaintiff/ Counter-Defendant